



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 5, 2002

Ms. Angela K. Moorman
Lloyd, Gosselink, Blevins,
Rochelle, Baldwin & Townsend, PC
111 Congress Avenue, Suite 1800
Austin, Texas 78701

OR2002-6926

Dear Ms. Moorman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173167.

The North Texas Municipal Water District (the "district"), which you represent, received a written request for "the Property Valuation Study, that you showed my wife and me during our meeting at the [district] facility in Wylie TX. on the evening of Wednesday, September 11, 2002." You contend that the requested information is excepted from required disclosure pursuant to section 552.103 of the Government Code and as work product under 552.111 of the Government Code.¹

We note at the outset that the requested valuation study is specifically made subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a *completed report*, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108. [Emphasis added.]

¹We assume for purposes of this ruling that the district has not released the substance of the requested report to the requestor. See Gov't Code § 552.007(b) (prohibiting selective disclosure).

The requested valuation study constitutes a “completed report” that was prepared for the district by an outside consultant. Consequently, this report is subject to section 552.022(a)(1). Sections 552.103 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect the governmental body’s interests and are therefore not other laws that make information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.); Open Records Decision Nos. 542 at 4 (1990) (governmental body may waive section 552.103), 473 (1987) (governmental body may waive section 552.111). Therefore, the district may not withhold any portion of the valuation report pursuant to section 552.103 or 552.111. Accordingly, the district may withhold this report only if it is made confidential under other law for purposes of section 552.101 of the Government Code or is excepted from disclosure under section 552.108 of the Government Code.²

However, the attorney work product privilege is also found in Rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information is confidential under Rule 192.5. *See* Open Records Decision No. 677 at 9 (2002). Work product is defined as

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents.

Tex. R. Civ. P. 192.5(a). Accordingly, in order to withhold attorney work product from disclosure under rule 192.5, a governmental body must demonstrate that the material, communication, or mental impression was created for trial or in anticipation of litigation. *Id.* Information that meets the work product test is confidential under rule 192.5 provided the information does not fall within the purview of the exceptions to the privilege enumerated in rule 192.5(c). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.--Houston [14th Dist.] 1993, no writ).

In this instance, you have informed us that the requested valuation study was created by an outside consultant at the request of the district’s attorney in anticipation of a contested case

²You have not raised section 552.108 for this information.

hearing before the State Office of Administrative Hearings. You further inform us that the hearing is currently pending. After reviewing your arguments to this office, we conclude that you have met your burden of establishing that the valuation report constitutes attorney work product that may be withheld from the public in its entirety pursuant to rule 192.5.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large, stylized 'M' and 'P'.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/lmt

Ref: ID# 173167

Enc: Submitted documents

c: Mr. Thomas Reaves
8441 County Road 472
Anna, Texas 75409
(w/o enclosures)